

Mr. Klein's Direct Line: (512) 322-5818
Email: dklein@lglawfirm.com

October 9, 2015

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Bldg. F – 1st Floor
Austin, Texas 78711-3087

VIA HAND DELIVERY

Re: DMS Real Tree LLC's Response to Request for Contested Case Hearing
regarding the Application for TPDES Permit No. WQ0015293001;
TCEQ Docket No. 2015-1264-MWD

Dear Ms. Bohac:

Please find enclosed an original and eight (8) copies of DMS Real Tree LLC's Response to Request for Contested Case Hearing filed in the above-referenced matter. Please return a file-stamped copy with our courier for our files.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,



David J. Klein

DJK/dsr
Enclosures

cc: Mr. Joe Stafford
Mr. Jeff Goebel
Service List

TCEQ DOCKET NO. 2015-1264-MWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
DMS REAL TREE, LLC FOR	§	ON
TPDES PERMIT NO. WQ0015293001	§	ENVIRONMENTAL QUALITY

**DMS REAL TREE LLC'S
RESPONSE TO REQUEST FOR CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COMES NOW, the applicant, DMS Real Tree, LLC ("*Real Tree*") and files its Response to Request for Contested Case Hearing ("*Response*") in the above-referenced matter under 30 Texas Administrative Code ("*TAC*") § 55.209, and would respectfully show the following:

I. INTRODUCTION

The Texas Commission on Environmental Quality ("*TCEQ*") should deny the contested case hearing request submitted by the City of San Marcos (the "*City*") under 30 TAC § 55.211 (b)(2) and approve Real Tree's application ("*Application*") for a new Texas Pollutant Discharge Elimination System ("*TPDES*") Permit, issuing the Executive Director's Draft Permit No. WQ0015293001 (the "*Draft Permit*"). A review of the City's contested case hearing request, in light of the Application and this Response, reveals that the City is not an affected person with a justiciable interest. Rather, the City's allegations, even when taken in a light most favorable to the City, demonstrate that the City is not affected by the Application in a manner unique from the general public and raise issues that are irrelevant and outside the TCEQ's jurisdiction in processing a TPDES Application.

II. BACKGROUND AND PROCEDURAL HISTORY

On August 25, 2014, Real Tree filed the Application with the TCEQ, and the Executive Director of the TCEQ (the “**ED**”) declared the Application administratively complete on September 4, 2014. The “Notice of Receipt of Application and Intent to Obtain Water Quality Permit,” (the “**NORF**”) was mailed by the Office of the Chief Clerk and published by Real Tree in English in the *Austin American Statesman* and in Spanish in *Ahora Si!* on October 9, 2014. The Application was available for inspection by the public at the Hays Government Center, Law Library, 712 South Stagecoach Trail, San Marcos, Texas.

After completing the technical review of the Application, the ED prepared a “Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision” (“**Technical Summary**”) and issued an initial Draft Permit on April 10, 2015. The “Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater” (the “**NAPD**”) was mailed by the Office of the Chief Clerk and published by Real Tree in English in the *Austin American Statesman* on April 27, 2015, and in Spanish in *Ahora Si!* on April 30, 2015. The City submitted its first set of comments on May 27, 2015 (“**Comment Letter**”). The ED filed a Response to Public Comments (“**RTC**”) on July 10, 2015, and provided an opportunity for further comments and hearing requests. The opportunity to submit comments and request a contested case hearing on the ED’s decision on the Application expired on August 10, 2015. The City submitted additional comments and a request for a contested case hearing on August 10, 2015 (“**Hearing Request**”). No other comments or hearing requests were filed.

On September 25, 2015, the TCEQ sent notice of the Application being placed on the public meeting agenda of the Commissioners of the TCEQ for November 4, 2015, and provided

an opportunity for the Applicant, the ED, and the Public Interest Council of the TCEQ to file written responses to the hearing request by October 9, 2015. Thus, this Response is timely filed.

III. APPLICABLE LAW

Section 5.556 of the Texas Water Code (“*TWC*”) expressly provides that, in order to grant a hearing request, the TCEQ must determine that: (1) the request was filed by an affected person as defined by Section 5.115; and (2) that the issue: (a) involves a disputed issue of fact; (b) was raised during the public comment period; and (c) is relevant and material to the decision on the Application.¹ In its Hearing Request, the City specifically states that “[t]he City is filing this request for a contested case hearing pursuant to Texas Water Code § 13.002(1) and 30 TAC § 55.21 (b)(4) and 30 TAC § 55.29 (b) as an affected person.”² However, neither the cited TWC statute nor TCEQ regulations apply to Real Tree’s Application.³ Instead, since the Application was deemed administratively complete after September 1, 1999, the TCEQ rules implementing TWC § 5.556 that apply to Real Tree’s Application are found in 30 TAC Chapter 55, Subchapter F.⁴

In determining whether the City is an affected person, the TCEQ’s rules provide that it consider the following:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Except as provided by §55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with

¹ TWC § 5.556(c) and (d)(West 2015); see also 30 TAC § 55.211(c)(2)(A)(2015) (implementing TWC § 5.556(c)).

² Hearing Request, page 1.

³ TWC Ch. 13 applies to water rates and services, not TPDES permits. See TWC §§ 13.001 and 13.002 (explaining that Ch. 13 applies to cases involving certificates of convenience and necessity or water and sewer service rates).

⁴ 30 TAC § 55.200 provides that “[t]his subchapter applies only to applications filed under Texas Water Code, Chapter 26, 27, or 32 or Texas Health and Safety Code, Chapter 361 or 382 that are declared administratively complete on or after September 1, 1999.” 30 TAC § 55.200 (2015).

authority under state law over issues raised by the application *may* be considered affected persons.⁵

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁶

As discussed in more detail, below, the City has failed to meet its burden of proof that it is an affected person with a justiciable interest unique from the general public under 30 TAC § 55.203.

IV. EVALUATION OF REQUEST FOR CONTESTED CASE HEARING

The allegations in the City's Hearing Request that (i) the City is a nearby landowner, (ii) the City could be a regional wastewater services provider to Real Tree, and (iii) Real Tree does not have the financial, managerial, or technical ability to operate the proposed wastewater treatment facilities all fail to demonstrate, for legal reasons, that the City is an affected person with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application that is unique from the rest of the general public. Simply put, the City's real property and wastewater system are located several miles from Real Tree, beyond the TCEQ's proximity prerequisites for TPDES permit applications, and examining Real

⁵ Emphasis added.

⁶ 30 TAC § 55.203 (2015).

Tree's ability to provide wastewater service is beyond the statutory and regulatory scope for processing a TPDES application.

A. The City's Ownership of the San Marcos Airport Is Several Miles from Real Tree's Discharge Point

The City's ownership of the San Marcos Airport⁷ does not meet the City's burden of proof that it is an affected person with a justiciable interest unique from the general public because the airport property is over three miles away from the discharge point contemplated by the Application and Draft Permit. Again, an "Affected Person" is defined in TWC § 5.115(a) as follows:

For the purpose of an administrative hearing held by or for the commission involving a contested case, "affected person"...means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.⁸

Here, the City's Comment Letter merely states (and reasserts in its Hearing Request) that the City owns the San Marcos Airport, and that Real Tree's proposed discharge is projected to occur over the property. These allegations, taken as true, still fail to demonstrate that City will be affected by the activity in a manner not common to members of the general public. *Tellingly, the City fails to state the location and distance of the airport from Real Tree's proposed discharge point and why it believes it would be affected by the treated effluent discharged down the watercourse* (which will be treated to the strictest effluent limits issued by the TCEQ for TPDES permits).

⁷ Proof of ownership is the City's burden, and the City did not provide evidence of this important fact.

⁸ TWC § 5.115(a)(West 2015). Similarly, 30 Texas Administrative Code § 55.203 provides the definition of an "affected person" as a person who has a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to the members of the general public does not qualify as a personal justiciable interest."

The TCEQ has made it clear that, as to processing TPDES applications, neighboring landowners are only considered to be affected in a manner unique from the general public if their land is adjacent either to the wastewater treatment plant site or the discharge route for one stream-mile downstream of the discharge point.⁹ Accordingly, Real Tree has evaluated the distance between the discharge point and the San Marcos Airport, and fatal to the City's position, the airport is over three miles downstream of the discharge point, as shown on the map attached to this Response as Exhibit A and as confirmed by the Affidavit of Jeff Goebel, the representative of Real Tree that prepared the Application, attached hereto as Exhibit E.¹⁰

In accepting the allegations in the Comment Letter and Hearing Request as true, it is still undisputed that the distance between the San Marcos Airport and proposed discharge point is more than one mile. Consequently, the issue of whether the airport could be affected by the Application is one of law, not facts. To this end, because the City's real property interest is several miles downstream of the discharge point, the City's interests are not unique from those of the general public, and the City's ownership of the San Marcos Airport cannot serve as a basis for a contested case hearing.¹¹

B. The City Is Not a Regional Wastewater Service Provider Option to Real Tree

The City is not an affected person with a justiciable interest unique from the general public on the basis of regionalization because the City does not have a permitted wastewater treatment facility or collection system that could accept Real Tree's wastewater flows within a three-mile radius of Real Tree's proposed wastewater treatment plant under the Application and

⁹ See 30 TAC § 39.551(c)(2) (2015) (providing that the Chief Clerk shall mail notice to persons listed in § 39.413); 30 TAC § 39.413(1) (2015) (notice must be mailed to landowners named on application map); TCEQ Domestic Wastewater Permit Application Domestic Administrative Report 1.1 "Affected Landowner Information," subsection (a) (requiring applicants to include in map property boundaries of the landowners located one full stream mile downstream of the discharge point).

¹⁰ Exhibit E, Affidavit of Jeff Goebel, page 2, Section 3.

¹¹ *Id.*

Draft Permit. Further, even if the City has facilities that are within three miles of Real Tree's proposed wastewater treatment plant, a conservative cost analysis was provided to TCEQ and the City demonstrating that connecting to the City's facilities at the tie-in point designated *by the City* is cost-prohibitive to Real Tree.

As a side note, the City's Wastewater Master Plan does not plan to extend the City's wastewater system to the location of Real Tree's proposed wastewater treatment plant. While the City may extend the wastewater system to the vicinity of Real Tree's plant, that extension is not projected to occur until at least 2035.

1. The City's Wastewater System Is More Than Three Miles from Real Tree's Proposed Wastewater Treatment Plant, and a Cost Analysis Was Provided.

Real Tree acknowledges that TCEQ's policy is to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state."¹² To implement this policy, the ED requires an applicant for a TPDES permit to provide information regarding any wastewater treatment or collection systems within a three-mile radius of the proposed facility.¹³ The City claims in its Hearing Request that Real Tree stated in its Application that the City had wastewater facilities within three miles of the proposed facility, and that, as a result, the Applicant should have been required to provide some evidence that the costs to connect to the City's system would outweigh the benefits of regionalization. This is simply false. To the contrary, the Applicant stated in its Application that it did not believe a system existed within three miles (*See, Exhibit B*).

¹² TWC § 26.081(a)

¹³ *See*, TCEQ Domestic Wastewater Permit Application Domestic Technical Report 1.1, Section 1.c.3.

Nevertheless, as part of the technical review of the Application, TCEQ Staff notes that the City might have a facility within a three-mile radius. In response, Mr. Goebel, on behalf of Real Tree, and Phillip Urbany of the TCEQ exchanged email correspondence with Tom Taggart and Jon Clack, both representatives of the City, regarding this issue. This correspondence reveals that, while the City believed it had capacity to serve the area, it did not currently have infrastructure within three miles of the proposed facility that the Applicant could tie into. This email correspondence, which is included in the TCEQ's file for this Application, is attached hereto as Exhibit C. *Further, in the email dated January 14, 2015, from Jeff Goebel to Mr. Clack and Mr. Urbany, Mr. Goebel provided a map showing the location the City would require the Applicant to tie into for sewer service, and which he stated, was located over 23,000 feet (4.26 miles) from the subject property and would cost between \$3.5 and \$4.2 million to construct.* A clearer version of the map provided in the email correspondence is attached to this Response as Exhibit D. This distance separating the City's wastewater system and Real Tree's proposed wastewater treatment plant is undisputed, and, thus, there is no question of fact on this issue.

Because the City infrastructure that the City would require the Applicant to tie into is over four miles from Real Tree's proposed service area and wastewater treatment plant, a cost analysis should not have been required. Nevertheless, Mr. Goebel did provide a cost estimate to the TCEQ and the City, and that analysis was not disputed by Mr. Clack at the time of the correspondence or in the City's Comment Letter or Hearing Request. In addition, again fatal to the City, Mr. Clack himself stated in a January 14, 2015 email to Mr. Urbany that, while the City did have sufficient capacity to serve the Applicant's development, there would be a "substantial cost to the developer to extend infrastructure to [the] City of San Marcos' collection system."

(see, Exhibit C) According to the affidavit of Mr. Goebel attached as Exhibit E, a very conservative estimate of \$100 per linear foot (LF) of line would put the cost at least \$2.5 million. The City itself has estimates for this size of line between \$173/LF to \$330 (see, Exhibit F, which includes Table 8-1 from the City's Master Plan and a spreadsheet from the Capital Improvement Plan the City has posted on its website¹⁴). Thus, even if the City's system is within three miles, the costs to the Applicant to connect to a line with sufficient capacity to accept flows from the proposed service area are economically prohibitive.

The City also noted in its Hearing Request that it has statutory authority over and an interest in the issues relevant to the Application by virtue of its authority as a home rule municipality to operate a utility system inside or outside its corporate limits. The City noted that it owns and operates a "regional" wastewater utility providing wastewater service to over 55,000 customers. But 30 TAC § 55.203(b) does not grant a local government automatic affected person status.¹⁵ While the Applicant acknowledges the City's authority to operate a utility system outside its corporate limits, the City has no authority to approve or deny a TPDES permit. And because the City does not have infrastructure in place to serve the development to be served by Applicant's proposed facility, it has not proven it has an interest in this Application that is distinguishable from that of the general public.

¹⁴ The City's 2015-2024 Capital Improvement Plan can be found at: www.ci.san-marcos.tx.us/index.aspx?page=952. Exhibit F includes p. 12 of that document. Note: The \$177 estimate is a unit cost for a basic pipeline, excluding the costs of obtaining easements *and does not include the costs of paying impact fees to the City, which would be an additional, significant expense*. Project 416 of the Capital Improvement plan shows a 6"-8" line, approximately 600 ft. long costing \$200,000. The City would have required the Applicant to build an 18" force main over 23,000 ft. long.

¹⁵ This section provides that "governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application *may* be considered affected persons" (Emphasis added).

2. The City's Wastewater Master Plan Does Not Contemplate Extending Its System to Serve the Land to be Served by Real Tree.

In the City's Comment Letter and Hearing Request, it states that "the 200-acre tract located at the intersection of Highway 21 and Yarrington Road" (the "**Tract**"),¹⁶ which Real Tree intends to serve through the permitted project, is an area "*projected to be served* by the City's wastewater utility *in the future* as reflected in the recently adopted Master Plan,"¹⁷ and that the location of the Real Tree proposed plant is in "located within the area *projected to be served* by the City."¹⁸ Once again, however, the City fails to provide evidence to support these statements.

In rebutting these allegations, Real Tree provides a copy of a map from the City's Master Plan, which is posted on the City's website,¹⁹ attached to this Response as **Exhibit G**. For ease of reference, we have added the location of the proposed facility to the map. This map shows future wastewater infrastructure the City is planning *near* the Tract; but, the Tract itself does not appear to be included in the plan. To the extent the City's planned wastewater infrastructure could serve the development to be served by the Applicant's proposed facility, it could not do so anytime in the near future. The map in **Exhibit G** shows that infrastructure in the general vicinity of the proposed facility is not even planned to be built until 2035 (*see*, the map legend, which shows the lines in green as being planned for 2035).²⁰ Real Tree does not dispute the contents of the Master Plan; rather, the issue is legal in nature as to whether Real Tree can be forced to wait more than 20 years to develop the Tract because that is when City will extend its wastewater system to the vicinity of the Tract. As stated by the ED in its Response to Public Comment in this matter, "just because a plant or collection system is located within three miles of a proposed

¹⁶ The Tract is actually roughly ¼ mile northwest of the intersection.

¹⁷ Emphasis added.

¹⁸ Emphasis added.

¹⁹ <http://www.ci.san-marcos.tx.us/modules/showdocument.aspx?documentid=4790>.

²⁰ Additionally, the closest proposed line is a 12" line, so it is not clear that the proposed facilities would be able to handle flows from the Tract.

facility [it] is not an automatic basis to deny an application or to compel an Applicant to connect to the facility.” Accordingly, the City’s Hearing Request should be denied.

C. The City’s Other Allegations Are Outside the TCEQ’s Jurisdiction for TPDES Applications.

The City’s allegations regarding (1) the City’s policy against “sewer package treatment plants”; (2) the City’s concern that the design, construction, operation, and maintenance of the wastewater treatment facility be provided by a reputable, professional wastewater treatment company licensed in the State of Texas; and (3) the City’s assertion that it has no “defined assurance” of Real Tree’s financial, technical, or managerial ability to own and operate the facility are outside the scope of the TCEQ’s jurisdiction for TPDES Permit applications. The TCEQ has consistently taken the position that it does not have jurisdiction over these financial and management issues.²¹

V. CONCLUSION

Because the City is not an affected person, and the issues raised in its Comment Letter and Hearing Request do not meet the statutory requirements for referral to the State Office of Administrative Hearings for a contested case hearing pursuant to § 5.556 of the Texas Water Code, Real Tree respectfully requests that the Commission deny the request and approve the Application and issue the Draft Permit. Even if the Commission determines that the City is an affected person, TWC § 5.556 requires both that the protestant be an affected person *and* that the issue: (a) involve a disputed issue of fact; (b) raised during the public comment period; (c) that is relevant and material to the decision on the Application. The City’s and Real Tree’s materials do not show that the airport is within a mile downstream of the proposed discharge point, or that

²¹ The City also commented that it offered to enter into an agreement with Real Tree to ensure appropriate design, construction, operation, and maintenance. The agreement was, in fact, initially offered and drafted by Real Tree to address some of the City’s concerns.

the City has a wastewater facility capable of accepting Real Tree's flows within three miles of the proposed wastewater treatment plant. But even if the City had a wastewater facility within three miles, Real Tree provided a cost estimate to connect to the City system, and those costs are unreasonable and render the project not economically feasible. Given this concurrence of information, and the lack of any other protests to the Application, it is apparent that there are no disputed issues of fact relevant to the Commission's granting of the Permit. Therefore, the Commission may move forward with approval of the Application. Even if the TCEQ decides that the City is an affected person, the City has not met the second prong of the TWC § 5.556 test because there are no disputed facts concerning any allegation by the City on an issue under TCEQ's jurisdiction for processing TPDES permit applications. Thus, the Commission should deny the Hearing Request and approve the Application and Draft Permit.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
TELEPHONE (512) 322-5800
FAX: (512) 472-0532



DAVID J. KLEIN
State Bar No. 24041257

CHRISTIE DICKENSON
State Bar No. 24037667

ATTORNEYS FOR DMS REAL TREE, LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of DMS Real Tree's Response to Request for Contested Case Hearing was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery and/or facsimile at the address listed below on this 9th day of October, 2015.

FOR THE EXECUTIVE DIRECTOR:

Alicia Ramirez, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Rebecca Moore, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087

Brian Christian, Director
Texas Commission on Environmental Quality
Environmental Assistance Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

Bridget C. Bohac
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

REQUESTER:

Jacqueline Cullom
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666-6314

INTERESTED PERSON:

Tom Taggart
630 East Hopkins Street
San Marcos, Texas 78666-6314



David J. Klein

EXHIBITS

Exhibit A	Map of San Marcos Airport
Exhibit B	Excerpt of Application Regarding Regionalization
Exhibit C	Regionalization Correspondence
Exhibit D	Map Showing Tie-In Distance
Exhibit E	Affidavit of Jeff Goebel
Exhibit F	City Cost Estimate Information
Exhibit G	City Master Plan Map

EXHIBIT A

Discharge Route

Proposed Discharge Point

Discharge router
3.2 miles to San
Marcos Property

Proposed WWTP Site

Start of airport property
along discharge route

San Marcos 24" Line

Google earth

© 2015 Google

2 mi

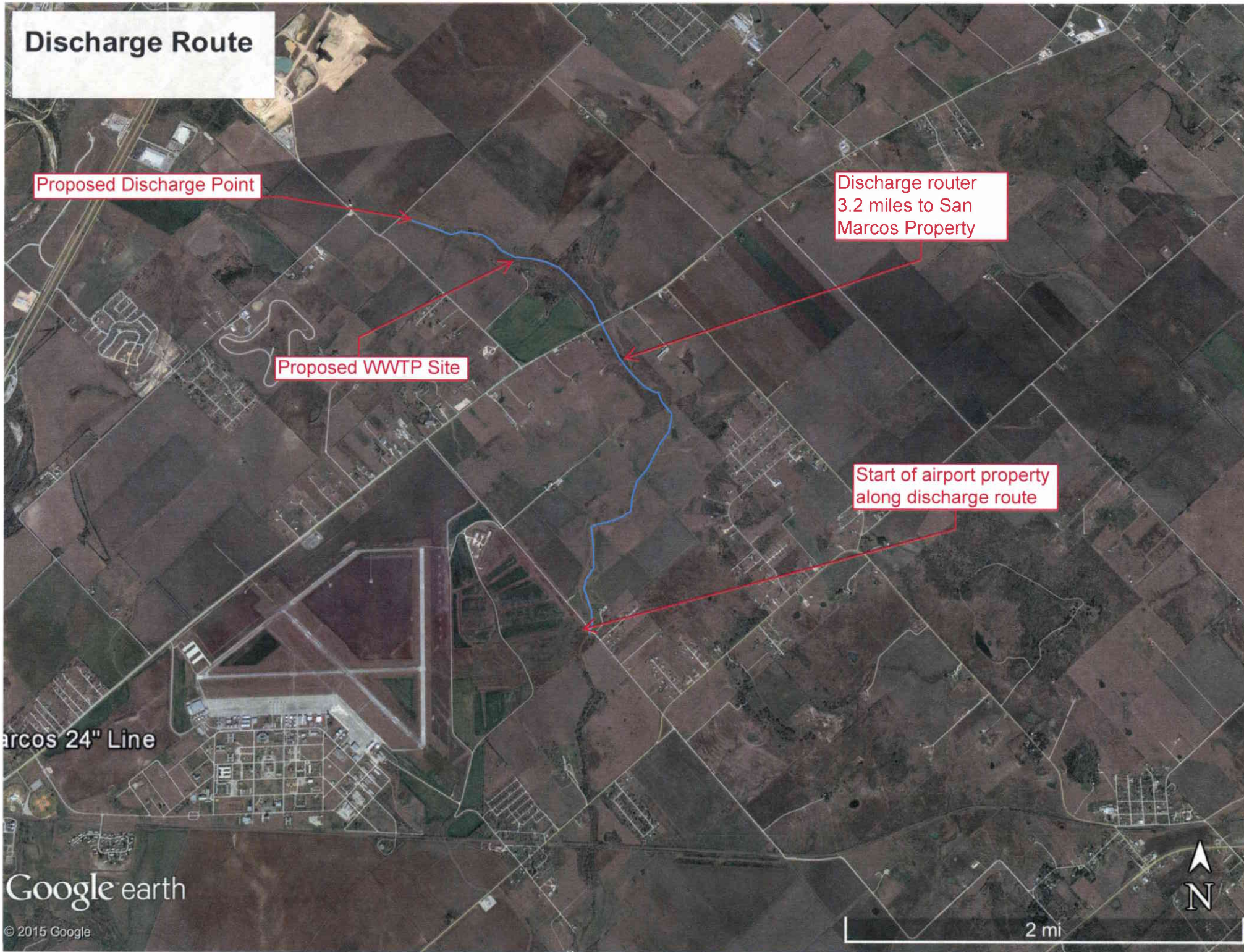


EXHIBIT B

DOMESTIC TECHNICAL REPORT 1.1

THE FOLLOWING IS REQUIRED FOR NEW AND AMENDMENT APPLICATIONS

1. PERMITTED AND/OR PROPOSED FLOWS (Instructions, Page 46)

a. Complete the following chart.

PERMITTED AND /OR PROPOSED FLOW:	Initial/existing Phase	Intermediate Phase	Final Phase
Design Flow (MGD)	0.06	0.24	0.54
2-Hr Peak Flow (MGD)	0.24	0.96	2.16
Construction estimated to start	2016	2018	2021
Date waste disposal to start	2016	2018	2021

Phase currently in operation: NONE

b. Provide a detailed discussion regarding the need for the proposed permit or proposed phase(s). Failure to provide sufficient justification may result in the Executive Director recommending denial of the proposed phase(s) or permit.

STAFFORD DEVELOPMENT — OK

c. Provide the following information concerning regionalization of domestic wastewater treatment facilities:

1. If the applicant is a city, check N/A and proceed to item 2: ☐ N/A

Is any portion of the proposed service area located in an incorporated city?

☐ Yes ☒ No

If yes, within the city limits of: _____

If yes, is correspondence from the city is attached: ☐ Yes ☒ No

If consent to provide service is available from the city, is justification for the proposed facility and a cost analysis of expenditures that includes the cost of connecting to the city versus the cost of the proposed facility or expansion attached? ☐ Yes ☒ No

2. Is any portion of the proposed service area located inside another utility's CCN area?

☐ Yes ☒ No

☐ If yes, check if justification for the proposed facility and a cost analysis of expenditures that includes the cost of connecting to the CCN facilities versus the cost of the proposed facility or expansion is attached.

3. Are there any domestic permitted wastewater treatment facilities and/or collection systems located within a three-mile radius of the proposed facility?

☐ Yes ☒ No NONE FOUND

EXHIBIT C

To: Taggart, Tom
Cc: Clack, Jon; Jeff Goebel (jeff@quadvest.com); Firoj Vahora
Subject: Application for proposed Permit WQ0015293001

Mr. Taggart

I need assistance in confirming that the City of San Marcos is not able to provide wastewater service so I can process a permit application.

A review shows that the City of San Marcos facility (WQ0010273002) may be within 3 miles.

The applicant's consultant has sent a letter (see attachment).

A reply to this email would be OK to answer the letter.

Phillip Urbany

From: Clack, Jon <JClack@sanmarcostx.gov>
Sent: Wednesday, January 14, 2015 10:34 AM
To: Phillip Urbany
Cc: Jeff Goebel (jeff@quadvest.com); Firoj Vahora; Taggart, Tom
Subject: RE: Application for proposed Permit WQ0015293001

Mr. Urbany,

The City of San Marcos does have sufficient capacity to provide wastewater service to the permit applicant's development. However, there would be substantial cost to the developer to extend infrastructure to City of San Marcos' collection system.

Jon L. Clack
Asst. Director of Public Services
Water / Wastewater
630 East Hopkins
San Marcos, TX 78666
Office: 512.393.8003
Mobile: 512.644.9724

From: Phillip Urbany [<mailto:phillip.urbany@tceq.texas.gov>]
Sent: Tuesday, December 16, 2014 4:32 PM
To: Taggart, Tom
Cc: Clack, Jon; Jeff Goebel (jeff@quadvest.com); Firoj Vahora
Subject: Application for proposed Permit WQ0015293001

Mr. Taggart

I need assistance in confirming that the City of San Marcos is not able to provide wastewater service so I can process a permit application.

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The applicant's consultant has sent a letter (see attachment).

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Phillip Urbany

From: Jeff Goebel <jeff@quadvest.com>
Sent: Wednesday, January 14, 2015 4:14 PM
To: Clack, Jon; Phillip Urbany
Cc: Firoj Vahora; Joe Stafford (joe@staffordcompany.com)
Subject: RE: Application for proposed Permit WQ0015293001
Attachments: Force Main connection.pdf

Mr. Urbany

I have attached a map of the location that San Marcos would require the applicant to tie into for sewer service. It is approximately 23,000' from the subject property and will require a 18" force main. It is anticipated that the cost of this force main will run \$3.5 – \$4.2 million to construct. In addition, and this is not confirmed with San Marcos, the developer would expect to pay some impact fee on top of the line construction. It is not economically feasible at this time to connect to the City.

I have copied Mr. Clack on this email, as to give him an opportunity to review any and all correspondences the applicant has in relation to connection with the city.

Please let me know if this satisfies the TCEQ requirements needed to move the permit forward or if you have any additional questions.

Thank you

Jeff Goebel

From: Clack, Jon [<mailto:JClack@sanmarcostx.gov>]
Sent: Wednesday, January 14, 2015 10:34 AM
To: Phillip Urbany
Cc: Jeff Goebel; Firoj Vahora; Taggart, Tom
Subject: RE: Application for proposed Permit WQ0015293001

Mr. Urbany,

The City of San Marcos does have sufficient capacity to provide wastewater service to the permit applicant's development. However, there would be substantial cost to the developer to extend infrastructure to City of San Marcos' collection system.

Jon L. Clack
Asst. Director of Public Services
Water / Wastewater
630 East Hopkins
San Marcos, TX 78666
Office: 512.393.8003
Mobile: 512.644.9724

From: Phillip Urbany [<mailto:phillip.urbany@tceq.texas.gov>]
Sent: Tuesday, December 16, 2014 4:32 PM



EXHIBIT D



EXHIBIT E

TCEQ DOCKET NO. 2015-1264-MWD

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
DMS REAL TREE, LLC FOR	§	ON
TPDES PERMIT NO. WQ0015293001	§	ENVIRONMENTAL QUALITY

AFFIDAVIT OF JEFF GOEBEL

STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

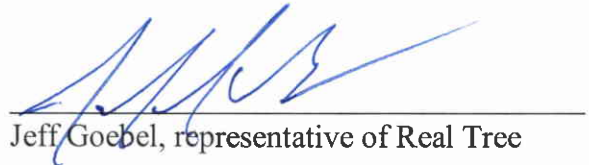
On this day, Jeff Goebel, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

“My name is Jeff Goebel. I am a representative of DMS Real Tree, LLC (“Real Tree”). I am more than 21 years of age and capable of making this affidavit. I have personal knowledge of the facts stated herein, which are true and correct.

1. I assisted Real Tree in the preparation and filing of the application at the Texas Commission on Environmental Quality (“TCEQ”) for a Texas Pollutant Discharge Elimination System (“TPDES”) Permit, that is subject matter of the application, styled above (the “Application”).
2. I am familiar with the roads and land in Hays County, Texas, including, but not limited to, the locations of (i) the wastewater treatment plant contemplated by the Application; (ii) the discharge route contemplated by the Application; (iii) service area proposed to be served by Real Tree as provided in the Application; (iv) the San Marcos Airport; (v) the City of San Marcos (“City”) wastewater system; and (vi) the proposed wastewater service

area of the City, according to its Wastewater Master Plan approved by the City on February 3, 2015 ("WW Master Plan") and other materials provided to me from representatives of the City.

3. After completing my research, I have determined that the San Marcos Airport is approximately 3.3 miles downstream of Real Tree's proposed discharge point.
4. I am familiar with the City's WW Master Plan and the area to be provided wastewater service under such Plan.
5. Representatives of the City told me that for Real Tree to receive wastewater services from the City, Real Tree would need to connect to the City's wastewater system at the north end of River Rd and the Rail Road Tracks ("Tie-in Location").
6. After completing my research, I have determined that the Tie-in Location is approximately 4.4 miles away from the proposed service area.
7. I have been in the municipal wastewater system construction and operation business for 18 years, and in my experience, I have put together hundreds of cost estimates to construct wastewater systems.
8. Using conservative cost estimates, I have determined that it would cost Real Tree \$2,500,000.00 – 3,200,000.00 to install the necessary infrastructure to connect to the City's wastewater system today at the Tie-in Location."



Jeff Goebel, representative of Real Tree

SUBSCRIBED AND SWORN TO BEFORE ME this 8th day of October, 2015.



Mary Helen Voelkel
Notary Public, State of Texas

EXHIBIT F

City of San Marcos

Table 8-1: Unit Costs for Pipelines

Pipe Size (in)	Pipes within Central Business District			Pipes outside of Central Business District		
	0-10' (\$/LF)	10-20' (\$/LF)	>20' (\$/LF)	0-10' (\$/LF)	10-20' (\$/LF)	>20' (\$/LF)
4	118	165	213	85	89	93
6	130	182	234	95	101	107
8	141	199	256	105	113	121
10	153	215	278	115	125	135
12	164	231	299	125	137	149
14	175	248	320	135	149	163
15	181	256	331	140	155	170
16	186	264	342	145	161	177
18	197	280	363	155	173	191
20	208	296	384	165	185	205
21	213	304	394	170	191	212
24	229	328	426	185	209	233
27	245	351	457	200	227	254
30	261	374	488	215	245	275
33	276	397	518	230	263	296
36	291	420	548	245	281	317
39	306	442	579	260	299	338
42	321	465	609	275	317	359
48	349	509	668	305	353	401
54	377	552	726	335	389	443
60	404	594	783	365	425	485
66	430	635	840	395	461	527
72	455	675	895	425	497	569
78	479	714	949	455	533	611
84	502	752	1,003	485	569	653
90	524	790	1,056	515	605	695

Note: Includes all costs associated with installing pipe (trench, backfill, erosion/sedimentation control, re-seeding, etc.)

FY 2015 - 2024 10 Yr CIP

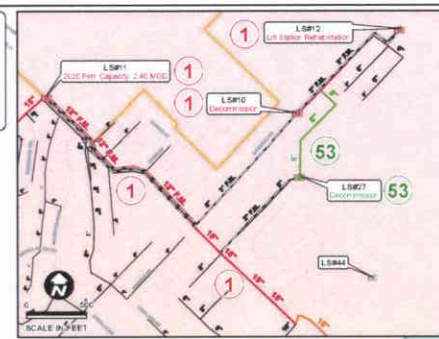
Funding Source	Project ID	Project	Project Description	2015	2016	2017	2018	2019	2020	2021	2022	
Water	206	Soyars Storage Tank #2	Replace the existing Soyars Storage Tank with a 1,000,000 gallon tank approximately 90 feet tall						\$ 150,000	\$ 1,800,000		
Water	346	Spring Lake Well Relocation	Construction of a new ground water supply source to replace Spring Lake wells if well is determined to be "ground water under the influence of surface water". Take off list; add back if TCEQ requires, tell them it will take 1 year	\$ 2,000,000								
Water	208	Stagecoach to McCarty Water Tank	Construct line from Summit Ridge to McCarty Tank. Parallel existing 12" with 16", approx. 5,900 lf						\$ 300,000	\$ 1,900,000		
Water	209	Staples Road Phase 1 12" Water	Construct 12" water main in Staples Rd from Broadway to Old Bastrop, approx. 2,100 lf		\$ 150,000	\$ 580,000						
Water	231	Trunk Hill Tank	Construct a 500,000 gallon tank north of Quail Run/Sleepy Hollow Neighborhood								\$ 1,790,000	
Water	234	Victory Gardens Neighborhood Improvements Ph II - South Section	Reconstruct streets in poor condition and repairs due to utility service improvements, Repair existing deteriorating lines in neighborhood,						\$ 150,000	\$ 1,500,000		
Water	281	Victory Gardens Subdivision Ph I - North Section	Repair existing Wastewater lines, Replace existing water mains, Reconstruct streets, Install storm sewers	\$ 1,300,000								
Water	525	Wallace Addition - Water and Wastewater Improvements	replace existing aged and sagging wastewater line in alley from Cape to Laredo; approx. 600 ft; replace existing aged water lines in Juarez and Staples; approx. 3,100 ft	\$ 200,000	\$ 850,000							
Water	247	Water Distribution Imp	On-going effort to replace, repair, and add water valves and hydrants throughout system, and make emergency replacements	\$ 100,000	\$ 100,000	\$ 100,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$
Water	248	Water Improvements	Minor engineering projects to repair waterlines	\$ 100,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$
Water	249	Water Main Oversizing	Funds for oversizing water mains in conjunction with development	\$ 150,000		\$ 150,000		\$ 150,000		\$ 150,000		\$
Water	250	Water Master Plan	Evaluate water system current and future needs and opportunities based on updated growth patterns							\$ 500,000		
Water	251	Water Pump Station Improvements	Systematic repair, replacement and upgrade of water pump stations	\$ 100,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$
Water	428	Water Station Ethernet	Install Ethernet at 10 water station locations									
Water	288	Water Supply - HCPUA	COSM Water Supply. Acquiring future water supplies through participation with Hays Caldwell Public Utility for Carrizo Wilcox aquifer water	\$ 746,720	\$ 656,970	\$ 683,895	\$ 683,895	\$ 1,769,870	\$ 718,000	\$ 9,834,563	\$ 12,807,200	\$ 8
Water	485	Whisper TX - Maxwell Buyout	Purchase water system assets withing Whisper TX boundary		\$ 500,000							
Water Total				\$ 6,646,720	\$ 6,806,970	\$ 8,593,895	\$ 4,850,562	\$ 11,494,870	\$ 11,628,000	\$ 24,259,563	\$ 19,547,200	\$ 11
Wastewater	422	Brown Terrace Wastewater Lift Station 20	Upsize lift station. Development dependent. Developer paid?						\$ 50,000			
Wastewater	425	Care Inn Wastewater Lift Station 5	Rehab lift station						\$ 100,000			
Wastewater	416	Clark Ave Wastewater Improvements	Improve wastewater from Walnut to Ramsey (6" -8"), approx. 600'; will need more capacity as development continues. Use pro-rata ordinance to reimburse City from developers				\$ 50,000	\$ 150,000				
Wastewater	453	Columbia Wastewater Improvements	improvements to existing wastewater line on Columbia at Hazelton to correct existing sag; replacement likely needed from Hazelton to Prospect, 1,800lf. Drainage crossing at Hazelton also needs to be replaced.		\$ 125,000	\$ 725,000						
Wastewater	35	Cottonwood Creek Wastewater S of CR 266	Construct 6,750ft of 42" gravity line from CR 266 to Southeast Wastewater Treatment Plant. Coordinated with new plant.									
Wastewater	39	Disaster Recovery Infrastructure (every 5 years)	Upgrade recovery system due to age					\$ 166,666		\$ 166,666		

EXHIBIT G

FIGURE 8-1
CITY OF SAN MARCOS
2035 WASTEWATER
CAPITAL IMPROVEMENT PLAN
LEGEND

- | | |
|------------------------------------|-------------------------------------|
| 2020 LRT Station Improvement | Existing LRT Station |
| 2025 LRT Station Improvement | Existing Wastewater Treatment Plant |
| 2035 LRT Station Improvement | Model Wastewater Line |
| Buildout LRT Station Improvement | Model Force Main |
| Under Construction Wastewater Line | Road |
| 2020 Wastewater Line | Railroad |
| 2020 Force Main | Stream |
| 2025 Wastewater Line | Lake |
| 2025 Force Main | Parcel |
| 2035 Wastewater Line | San Marcos City Limit |
| 2035 Force Main | |
| Buildout Wastewater Line | |
| Buildout Force Main | |
| Proposed Highway | |

- FUTURE WASTEWATER BASINS**
- | | |
|--------------------|----------------------|
| Cottonwood Basin | San Marcos Basin |
| Hemphill Basin | Sessoms Basin |
| Lower Blanco Basin | Willow Springs Basin |
| Purgatory Basin | |



- 20 Basin SM-04 Sanitary Sewer Evaluation
- 21 Basin SM-07 Sanitary Sewer Evaluation
- 34 Basin SM-06 Sanitary Sewer Evaluation

